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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 492

FRANCES ELAINE SMITH, Administratrix of the Estate of Eldon W. Smith, Deceased,

Petitioner,

vs.

UNION OIL COMPANY, INC., a corporation; CONTINENTAL OIL COMPANY, INC., a corporation; SHELL OIL COMPANY, INC., a corporation; SUPERIOR OIL COMPANY, INC., a corporation; and LOUIS N. WATERFALL, INC., a corporation,

Respondents.

Brief For Respondents In Opposition

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Subject Index

	Page
There is no final judgment in the State Court	1
There is no jurisdiction in the Supreme Court to review	2
Conclusion	3

Authorities Cited

Cases	Page
Chicago, Milwaukee & St. Paul Railway Company v. Bolch (1916) 242 U.S. 616, 61 L.Ed. 529, 37 S.Ct. 211	2
Cincinnati Street Railway Company v. Snell (1900) 179 U.S. 395, 45 L.Ed. 248, 21 S.Ct. 205	2
Gospel Army v. City of Los Angeles (1947) 331 U.S. 543, 91 L.Ed. 1662, 67 S.Ct. 1428	2
Southern Pacific Company v. Gileo (1956) 351 U.S. 493, 100 L.Ed. 1357, 76 S.Ct. 952	2

Statutes	
United States Codes, Title 28, Section 1257	2

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There Is No Final Judgment In The State Court.

Contrary to the Petition For Writ of Certiorari (Page 1 of Petition), no final judgment was entered in the above matter on June 1, 1966, or on any other date by the Supreme Court of California or by any other court of the State of California. On June 1, 1966, the Supreme Court of the State of California filed an order denying a hearing; thus, the decision of the California District Court of Appeal was left in effect. That decision reversed the trial court's judgment notwithstanding the verdict, but affirmed the order granting a new trial (Appendix A to Petition). Consequently, at this juncture, there is no

final judgment determining the rights of the parties and the case has been remanded to the Superior Court of Los Angeles County for trial.

There Is No Jurisdiction In The Supreme Court To Review.

Only "Final judgments or decrees rendered by the highest court of the State in which a decision could be had, may be reviewed by the Supreme Court..." 28 U.S.C., Section 1257.

"And it frequently has been said that for a judgment of an appellate court to be final and reviewable for this purpose it must end the litigation by fully determining the rights of the parties..." *Gospel Army vs. City of Los Angeles* (1947) 331 U.S. 543, 546, 91 L.Ed. 1662, 1665, 67 S.Ct. 1428.

If issues remain to be tried: "...there is no final judgment in the highest court of the State, and this Court, therefore, lacks jurisdiction to review. . ." *Southern Pacific Company vs. Gileo* (1956) 351 U.S. 493, 496, 100 L.Ed. 1357, 1363, 76 S.Ct. 952.

In *Cincinnati Street Railway Company vs. Snell* (1900) 179 U.S. 395, 397, 45 L.Ed. 248, 21 S.Ct. 205, Mr. Justice Brown stated:

> "We have held in too many cases even to justify citation, that a judgment reversing a case and remanding it for a new trial, or for further proceedings of a judicial chracter, is totally wanting in the requisite finality required to support a writ of error from this court."

And see: *Chicago, Milwaukee & St. Paul Railway Company vs. Bolch* (1916) 242 U.S. 616, 61 L.Ed. 529, 37 S.Ct. 211.

Conclusion.

A new trial having been ordered in the State Court, the petition should be dismissed for lack of jurisdiction.

Respectfully submitted,

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